



Attorney Docket No: 2557-000153/US  
Application No. 10/612,041  
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### ***REMARKS***

The Examiner required an election of species of one of the following inventions:

Group A, method of fabricating a semiconductor device having:

- 1) a silicon oxide layer (¶14);
- 2) a silicon oxide layer on the substrate and conductive material layer (¶15); and
- 3) dual spaces (¶18).

Group B, silicon and oxygen gas supply method:

- 1) silicon source gas is added before oxygen source gas (¶14);
- 2) silicon and oxygen source gas added at same time (¶14); and
- 3) silicon source gas is added after oxygen source gas (¶16).

Group C, nitrogen and oxygen gas supply method (¶¶37-38, 45-46):

- 1) nitrogen source gas is added before oxygen source gas;
- 2) nitrogen and oxygen source gas added at same time; and
- 3) nitrogen source gas is added after oxygen source gas.

Group D, type of reaction chamber (¶47-48):

- 1) single wafer; and
- 2) batch.

The Examiner further indicated that if the Applicant chooses Group A3, Applicant must also choose from Group E, including etching method used to form dual spacers (¶11, 21):

- 1) anisotropically etching the silicon nitride layer and the silicon oxide layer; and
- 2) anisotropically etching the silicon nitride layer and isotropically etching the silicon oxide layer.

In response to the Examiner's election of species requirement, Applicants provisionally elect, with traverse, to prosecute Groups A1, B1, C1 and D1, for which at least claims 1, 6-11, 13, 16-19, 38-40, 43-49 and 51 are readable on. Further, at least, claims 1 and 43 are generic.

Applicants specifically reserve the right to file divisional applications directed to non elected claims 2-5, 12, 14-15, 20-37, 41, 42, 50, and 52-69.

Foremost, it is respectfully submitted that the Examiner's grouping of Groups B and C is inaccurate as the claims fail to correspond to the groupings found in Groups B and C. Thus, Applicants have provided the Examiner with a more accurate definition of the species. For example, Group B and C can be classified as such:

Group B. Silicon and Oxygen gas supply method:

1. Silicon source gas is supplied prior to supplying the Oxygen source gas; and
2. Silicon source gas and Oxygen source gas are supplied at the same time.

Group C. Nitrogen and Oxygen source gas supply method:

1. The supply of the nitrogen source gas is stopped after the supply of the oxygen source gas begins;
2. The supply of the nitrogen source gas is stopped at substantially the same time as the supply of the oxygen source gas begins; and
3. The supply of the nitrogen source gas is stopped prior to supplying the oxygen gas.

Thus, Applicants have elected Groups B and C with the above groupings. However, if the Examiner does not agree with the above grouping, she is invited to contact Applicants' representative to further discuss the election of species requirement. Nonetheless, Applicants have made an election and traverse the election of species.

In particular, as set forth in M.P.E.P. § 806.04(f), claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted to different species is the fact that one claim recites limitations which under the disclosure are found in a first

species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. In this case, all the features found in independent claims 1 and 43 are found in independent claims 20 and 58, and thus, cannot be mutually exclusive.

Further, as set forth in 37 C.F.R. § 1.146, a reasonable number of species are permitted in a single application. The examination of all the species together in one application would not place an undue burden on the Examiner. It is respectfully submitted that the Examiner's election of species requirement is improper in view of the fact that a reasonable number of species are set forth in the present application, and respectfully requested to reconsider her election of species requirement and act on all of the claims.

Further, it is also respectfully submitted that the subject matter of all claims is sufficiently related that a thorough search for the subject matter of any one species would encompass a search for the subject matter of the remaining claims. Thus, it is respectfully submitted that the search and examination of the entire application could be performed without serious burden. M.P.E.P. § 803 which states:

"If the search and examination of an entire application can be made without serious burden, the Examiner must examine on the merits, even though it includes claims too distinct or independent invention." (emphasis added)

Thus, it is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants' and duplicative examination by the Patent Office.

For all of the above stated reasons, reconsideration and withdrawal of the outstanding election of species requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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